

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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In Re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation

Master File No. 1:00-1898
MDL 1358 (SAS)
M21-88
ECF Case

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This document relates to the following case:

City of New York, et al. v. Amerada Hess Corp., et al.
Case No. 04 Civ. 3417

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**DECLARATION OF MARNIE E. RIDDLE IN SUPPORT OF
PLAINTIFFS' MEMORANDUM IN OPPOSITION TO EXXON MOBIL
DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER
OF LAW OR, IN THE ALTERNATIVE, FOR A NEW TRIAL AND/OR
REMITTITUR**

Marnie E. Riddle, an attorney duly admitted *pro hac vice* by this Court, hereby declares under penalty of perjury:

1. I am an attorney at Sher Leff LLP in San Francisco, California, counsel for the City of New York Plaintiffs in the above-captioned matter. I have personal knowledge of the matters set forth herein and if called as a witness I could and would competently testify thereto under oath.

2. Attached as Exhibit 1 is a true and correct copy of relevant pages of the Memorandum of Points and Authorities of ChevronTexaco Corporation; Chevron U.S.A., INC.; Chevron Products Company; ExxonMobil Corporation; Thrifty Oil Co.; Best California Gas, Ltd.; Shell Oil Company; Shell Oil Products Company; Shell Pipeline Corporation; Equilon Enterprises LLC; Equilon Pipeline Company LLC; and Texaco Refining and Marketing Inc. in Support of Motion for Determination of Good Faith

Settlement [CCP § 877.6], filed in *City of Santa Monica v. Shell Oil Company, et al.*, State of California, Orange County Superior Court Case No. 01CC4331 (“*City of Santa Monica v. Shell*”).

3. Attached as Exhibit 2 is a true and correct copy of the Notice and Entry of Amended Order on Motion by ChevronTexaco Corporation; Chevron U.S.A., INC.; Chevron Products Company; ExxonMobil Corporation; Thrifty Oil Co.; Best California Gas, Ltd.; Shell Oil Company; Shell Oil Products Company; Shell Pipeline Corporation; Equilon Enterprises LLC; Equilon Pipeline Company LLC; and Texaco Refining and Marketing Inc. in Support of Motion for Determination of Good Faith Settlement filed on January 9, 2004 in *City of Santa Monica v. Shell*.

4. Attached as Exhibit 3 is a true and correct copy of relevant pages of the Declaration of Barbara Mickelson in Support of Motion for Determination of Good Faith Settlement [CCP § 877.6], December 1, 2003, filed in *City of Santa Monica v. Shell*.

5. Attached as Exhibit 4 is a true and correct copy of relevant pages of the Declaration of Anthony Brown Regarding Motion for Determination of Good Faith Settlement dated October 29, 2002, filed in *City of Santa Monica v. Shell*.

Executed: this the 27th day of May, 2010

/s/ MARNIE E. RIDDLE
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

CITY OF SANTA MONICA,
 Plaintiff,

vs.

SHELL OIL COMPANY; SHELL OIL
 PRODUCTS COMPANY; SHELL
 PIPELINE CORPORATION; CHEVRON
 CORPORATION; CHEVRON U.S.A. INC.;
 CHEVRON PRODUCTS COMPANY;
 ATLANTIC RICHFIELD COMPANY;
 MOBIL OIL CORPORATION;
 EXXONMOBIL CORPORATION; TOSCO
 CORPORATION; ULTRAMAR INC.;
 TEXACO REFINING AND MARKETING
 INC.; EQUILON ENTERPRISES LLC;
 ARCO CHEMICAL COMPANY;
 LYONDELL CHEMICAL COMPANY;
 EXXON CORPORATION; UNOCAL
 CORPORATION; EQUILON PIPELINE
 COMPANY LLC; and DOES 1 through
 600, inclusive,

Defendants

AND OTHER CROSS-COMPLAINTS

Case No. 01CC04331
 [Assigned for all purposes to the
 Honorable Stephen J. Sundvold]

**MEMORANDUM OF POINTS AND
 AUTHORITIES OF CHEVRONTExACO
 CORPORATION; CHEVRON U.S.A. INC.;
 CHEVRON PRODUCTS COMPANY;
 EXXONMOBIL CORPORATION;
 THRIFTY OIL CO.; BEST CALIFORNIA
 GAS, LTD.; SHELL OIL COMPANY;
 SHELL OIL PRODUCTS COMPANY;
 SHELL PIPELINE CORPORATION;
 EQUILON ENTERPRISES LLC; EQUILON
 PIPELINE COMPANY LLC; AND
 TEXACO REFINING AND MARKETING
 INC. IN SUPPORT OF MOTION FOR
 DETERMINATION OF GOOD FAITH
 SETTLEMENT [CCP § 877.6]**

Complaint Filed: June 19, 2000
 Trial Date: None Set

Hearing Date: December 19, 2003
 Time: 9:30 a.m.
 Dept: CX-105
 Judge: Honorable Stephen J. Sundvold

1-LA/742489.1

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR
 DETERMINATION OF GOOD FAITH SETTLEMENT [CCP § 877.6]**



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1 ChevronTexaco Corporation (formerly Chevron Corporation), Chevron U.S.A. Inc., and
2 Chevron Products Company (collectively “Chevron”); ExxonMobil Corporation (“ExxonMobil”);
3 Shell Oil Company, Shell Oil Products Company, Shell Pipeline Corporation, Equilon
4 Enterprises LLC, Equilon Pipeline Company LLC and Texaco Refining And Marketing Inc.
5 (collectively “Shell”); Thrifty Oil Co. (“Thrifty”) and Best California Gas, Ltd. (“Best”)
6 respectfully submit this Memorandum of Points and Authorities in support of their motion for
7 good faith settlement determination, pursuant to California Code of Civil Procedure section
8 877.6.

9 I. INTRODUCTION

10 This motion seeks approval of a \$312.85 million settlement, which was reached following
11 19 months of mediation and negotiation by the settling parties. The subject settlement provides
12 for a substantial cash payment to plaintiff City of Santa Monica (the “City”), restoration of the
13 City’s drinking water supply, and avoidance of further wasteful litigation between these parties.
14 Specifically, the settlement between the City, Shell, Chevron, ExxonMobil, Thrifty, and Best
15 provides for \$92.5 million in nonrefundable payments to the City and guaranteed funding by
16 Shell, Chevron and ExxonMobil for construction and operation of a water treatment facility (the
17 “guarantee” portion), with a small portion of that funding to be paid from other settlements or a
18 final judgment against any remaining defendants.

19 The water treatment facility will enable the City to restore use of its drinking water wells
20 that have been shut down as a result of the gasoline releases that are the subject of this lawsuit.¹
21 The amount that Shell, Chevron and ExxonMobil will ultimately pay through their commitment
22 to fund the treatment facility will depend on the actual treatment costs. It *may* also be reduced
23 somewhat by the City’s recovery from the remaining, non-settling defendant, Lyondell Chemical
24 Company (“Lyondell”), depending upon the size of that recovery. The obligation to fund the
25 water treatment facility has been valued by the settling parties at \$220.05 million – on top of the

26 ¹ The Settlement Agreement and related documents are attached to the Declaration of David L. Schrader
27 (“Schrader Decl.”) as Ex. 1. The \$92.5 million case payments are allocated as follows: Shell - \$62.5
28 million; Chevron, Thrifty and Best - \$20 million; and ExxonMobil - \$10 million. [See Settlement
Agreement at ¶ 3.4.1.]



1 \$92.5 million initial cash payment by the settling defendants. In addition, Chevron has agreed to
2 waive a potential counter-claim valued at \$300,000, bringing the total value of this settlement to
3 \$312.85 million. This extraordinary settlement is contingent upon a good faith determination by
4 this Court.

5 This settlement plainly meets the standard for good faith set forth by the California
6 Supreme Court:

- 7 • The settlement and documentation thereof were intensely negotiated in a series of
8 mediations before retired Superior Court Judges Keith Wisot and Daniel
9 Weinstein, which began in March 2002 and lasted until November 2003.
- 10 • The nonrefundable \$92.5 million payments by settling defendants, considered
11 alone, are well within the ballpark of their proportionate liability. One of the
12 settling defendant's expert consultants estimates three likely total treatment costs
13 to have an average \$92.6 million present value. The value agreed upon by the
14 settling defendants for the guaranteed commitment to fully fund the treatment
15 facility, plus the initial cash payment, bring the total settlement value to over \$300
16 million – more than triple what one defense expert opines it should actually cost
17 for complete remediation.
- 18 • The guarantee by Shell, Chevron and ExxonMobil to fund a wellhead treatment
19 facility assures that the City's five water wells will be returned to useful
20 production, regardless of the outcome of this litigation.
- 21 • With this settlement, the City has resolved its claims against all oil company
22 defendants who operated gasoline stations in the Charnock Sub-Basin. The only
23 remaining non-settling defendant is Lyondell – the manufacturer of MtBE, the
24 primary gasoline constituent that impacted the Charnock Wellfield. Once this
25 settlement is approved, Lyondell will be entitled to an offset credit of \$312.85
26 million against any judgment.

27 The strong public policies favoring settlements are exemplified by this settlement. The
28 settling defendants have stepped up to the plate to resolve the serious and substantial damages



1 alleged by the City to its drinking water supply. For the reasons set forth below, and in the
2 declarations and evidence supporting this motion, the settling defendants respectfully urge the
3 Court to grant this motion and find the settlement in good faith.

4 II. BACKGROUND

5 This lawsuit arises out of the City's discovery in 1995 that methyl tertiary butyl ether
6 ("MtBE") was detected in some of its water supply wells in the Charnock Wellfield, which
7 supplied approximately 40% of the City's drinking water. MtBE was a chemical added to
8 gasoline by a California refiner as early as 1986 and was a component of a large percentage of
9 gasoline marketed in Southern California by the end of 1992. MtBE, as an ether, dissolves more
10 readily into water than other components of gasoline. Thus, when gasoline containing MtBE is
11 leaked or spilled into the soil and percolates down to groundwater, some of the MtBE will
12 dissolve in the groundwater and disperse.

13 By June 1996, the City shut down its Charnock Wellfield because of the levels of MtBE
14 found in four of its five wells. The City, with the help of certain governmental agencies,
15 identified a number of service stations and other facilities where gasoline had been stored, or was
16 being stored, in underground storage tanks within a 1.25 mile radius of the Charnock Wellfield,
17 and two underground gasoline pipelines within this area, as potential sources of the MtBE
18 impacting the wellfield. In 1997, Chevron and Shell, later joined by ExxonMobil, entered into a
19 settlement agreement whereby Chevron, Shell and ExxonMobil agreed to provide the City with
20 replacement water and investigate the sources and extent of the gasoline releases in the Charnock
21 groundwater Sub-Basin. In 2000, that agreement terminated.

22 After the prior cooperative agreements with the City terminated, the City commenced this
23 lawsuit on June 19, 2000, against Shell, Chevron, Exxon-Mobil, several other refiners and
24 marketers of gasoline affiliated with facilities identified within the investigation area, and
25 Lyondell, a manufacturer of MtBE. The City's lawsuit seeks compensatory and punitive damages
26 under various theories, including nuisance, trespass, negligence, and strict product liability. The
27
28



City subsequently obtained an assignment of similar claims from Southern California Water Company ("SCWC") and is prosecuting those assigned claims here.²

Chevron, ExxonMobil, Thrifty and Best previously negotiated a sliding scale settlement with the City and filed a motion for good faith determination in November 2002. While that motion was pending, an agreement was reached between Shell, the City and the prior settling defendants. Shell's participation in this settlement agreement: (i) substantially increases the up front payment to the City, (ii) substantially reduces the potential sliding scale component of the settlement by reducing the potential benefit to the settling defendants of any future recoveries by the City, and (iii) eliminates the veto provision by the settling defendants over future settlements, which was the subject of much of the challenges made by non-settling defendants to the prior sliding scale settlement that did not include Shell. The proposed settlement, once approved by the Court as having been made in good faith, will resolve all claims of the City and SCWC against Shell, Chevron, ExxonMobil, Thrifty, and Best, and perhaps most importantly, will assure that the City will again be able to provide drinking water from its Charnock Wellfield wells.

III. ARGUMENT

A. Code Of Civil Procedure § 877.6 Permits The Settling Parties To Obtain A Determination That A Settlement Was Made In Good Faith.

Code of Civil Procedure § 877.6(a)(1) states:

"Any party to an action in which it is alleged that two or more parties are joint tortfeasors . . . shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors."

² SCWC also operated drinking water wells that drew water from the same aquifer as the City's Charnock Wellfield. SCWC's wells were shut down as a precaution against becoming affected by MtBE. SCWC filed suit on April 24, 2001, against the same defendants in the City's action, as well as additional defendants, including Thrifty and Best. SCWC subsequently sued the City over disagreements about SCWC's and the City's respective water rights in the Charnock Sub-Basin. As part of the resolution of that dispute, the City has now acquired all of SCWC's claims asserted in its lawsuit against Shell, Chevron, ExxonMobil, Thrifty, Best and other parties, and has amended its complaint in this action to incorporate all of those claims.



Pursuant to Code of Civil Procedure § 877.6(b), the settling parties here have supplied the Court with abundant evidence upon which to base its determination.³

California courts have recognized the strong policy in favor of settlements, noting:

Except in rare cases of collusion or bad faith . . . a joint tortfeasor should be permitted to negotiate settlement of an adverse claim according to his own best interests, whether for his financial advantage, or for the purchase of peace and quiet, or otherwise. His good faith will not be determined by the proportion his settlement bears to the damages of the claimant. For the damages are often speculative, and the probability of legal liability therefor is often uncertain or remote.

Stambaugh v. Superior Court, 62 Cal.App.3d 231, 238 (1976), cited with approval in *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.*, 38 Cal.3d 488, 499 (1985). In *Tech-Bilt*, the California Supreme Court announced the standard for determining whether a settlement was made in good faith, noting that an appropriate definition of good faith “would enable the trial court to inquire, among other things, whether the amount of the settlement is within the reasonable range of the settling tortfeasor’s proportional share of comparative liability for the plaintiff’s injuries.” 38 Cal.3d at 499.

The California Supreme Court identified certain factors to be taken into consideration in determining whether a settlement was arrived at in good faith. The factors pertinent to this settlement are:

1. a “rough approximation” of the plaintiff’s total recovery from all defendants and the settling defendants’ proportionate share of liability for that recovery;
2. the amount paid by the settling defendants in settlement; and
3. a recognition that a settling defendant should pay less in settlement than if that defendant were found liable after a trial.

Tech-Bilt, 38 Cal.3d at 499.

It is not necessary for the court to make a precise estimation of the size of the plaintiff’s total claim, nor the settling defendant’s liability exposure. Rather, it is sufficient that the

³ Because this settlement contains a “sliding scale recovery agreement,” the settling parties also complied with the notice requirements of CCP § 877.5 on November 20, 2003.



1 compensation paid by the settling defendant is “within the ballpark” of that defendant’s
2 proportionate liability. *Tech-Bilt*, 38 Cal.3d at 499-501. Any party asserting lack of good faith
3 must demonstrate “that the settlement is so far ‘out of the ballpark’ in relation to these factors as
4 to be inconsistent with the equitable objectives of the statute.” *Id.* at 499-500. Since *Tech-Bilt*,
5 the California Supreme Court has confirmed that it “is quite proper for a settling defendant to pay
6 less than his proportionate share of the anticipated damages. What is required is simply that the
7 settlement not be grossly disproportionate to the settlor’s fair share.” *Abbott Ford, Inc. v. Super.*
8 *Ct.*, 43 Cal.3d 858, 874-75 (1987). This settlement meets the standards set by the California
9 Supreme Court.

10 **B. Like Other Settlements, Sliding Scale Settlements Are Presumptively Valid.**

11 The California legislature has specifically recognized the validity of sliding scale
12 settlements. *See* Cal. Code Civ. Pro. § 877.5. California courts have held that the “statute
13 authorizing [sliding scale settlements] is reasonably related to the rational goal of promoting
14 settlements of lawsuits, and such agreements, like other settlements, are presumptively valid.”
15 *Rogers & Wells v. Super. Ct.*, 175 Cal.App.3d 545, 554 (1985). Only 10% of any future
16 recoveries by the City will be paid into the Operating Account (thereby reducing the settling
17 defendants’ obligations) and only if over \$40 million total is recovered by the City from other
18 sources.⁴

19 The leading case on confirmation of sliding scale settlements is *Abbott Ford*. 43 Cal.3d
20 858. In that case, defendant Abbott Ford and its insurer provided interest-free loans and
21 guaranteed plaintiff a recovery of \$3 million, with a dollar for dollar reduction of that amount
22 from recoveries plaintiff made against co-defendants Ford Motor Company and Sears-Roebuck.
23 The California Supreme Court recognized that, by the terms of the settlement, Abbott Ford might
24 ultimately not bear any liability to plaintiffs. 43 Cal.3d at 866. Nevertheless, the Court approved
25 the settlement as being in good faith and consistent with the *Tech-Bilt* standard and strong public

26 _____
27 ⁴ The Settlement Agreement provides that the first \$18 million recovered by the City shall be paid into
28 the Operating Account. Existing settlements with other defendants have already reached that level.
The next \$22 million goes directly to the City.



1 policies favoring settlements. The California Supreme Court also recognized “that affording an
2 injured person prompt payment of funds for his losses serves a very important state interest.” *Id.*
3 at 885. The settlement now before this Court does just that. In addition, unlike *Abbott Ford*,
4 there is no chance of complete reimbursement of settlement amounts paid by the settling
5 defendants here. Settling defendants will pay not only a nonrefundable \$92.5 million, but will
6 also pay the bulk of the treatment costs (more than 90%) under any scenario.

7 **C. This Settlement Meets All Applicable *Tech-Bilt* Criteria And Is Valid Under**
8 ***Abbott Ford*.**

9 In this settlement, the parties have agreed on a fixed, nonrefundable payment of \$92.5
10 million to the City. In addition, Shell, Chevron and ExxonMobil have agreed to fund and
11 guarantee the full Treatment Facility Costs including the construction, operation, and
12 maintenance of a treatment facility that will allow the City to restore production of drinking water
13 from its Charnock Wellfield. [See Settlement Agreement, ¶¶ 3.4 and 3.7.] These Treatment
14 Facility Costs also include an annual fee to cover internal charges of the City, the acquisition
15 costs for any additional real property needed for the Treatment Facility and the costs of any
16 replacement water. [Id. at ¶¶ 3.7.3, 3.7.5 and 3.7.6.] The Treatment Facility Costs will be paid
17 from an Operating Account funded 70% by Shell, 20% by Chevron and 10% by ExxonMobil.
18 [Id. at ¶¶ 3.13-3.14.]

19 The Settlement Agreement provides for a small contribution to the Operating Account
20 from settlements or final judgments with any other defendants. Specifically, the first \$18 million
21 of other settlements shall be paid into the Operating Account; the next \$22 million shall be paid to
22 the City; and any settlements or judgements above \$40 million shall be split with 10% to the
23 Operating Account and 90% to the City. [Id. at ¶ 3.12.3]. The evidence filed herewith
24 demonstrates that this settlement was reached in good faith through mediation and provides for
25 compensation to the City from Shell, Chevron, ExxonMobil, Thrifty, and Best that is well within
26 “the ballpark” of (i.e., not grossly disproportionate to) their potential liability exposure. The
27 evidence further demonstrates that the value agreed to by the City, Shell, Chevron, and
28



ExxonMobil for the guarantee portion of the settlement is reasonable and fair to the interests of the non-settling defendants.

1. The Value Of This Settlement “Roughly Approximates” The Proportionate Liability Of The Settling Defendants In Comparison With The City’s Approximate Total Recovery.

Based on an engineering analysis and cost estimate, the City’s consultant previously opined that the cost to restore the City’s drinking water resource through production of its Charnock Wellfield wells and treatment is a range between \$240 to \$527 million. [See Declaration of Anthony Brown (“Brown Decl.”) ¶¶6-7, filed November 4, 2002 as part of the prior good faith settlement motion by Chevron, ExxonMobil, Thrifty and Best.] This represents the range of compensatory damages that the City would have claimed at trial against defendants.

The City has already recovered \$4.075 million from Conoco, Inc., \$9.75 million from Atlantic Richfield Company and \$4.5 million from Ultramar, Inc. in settlements which were approved by the Court as being in good faith and fair to all of the other parties. In addition, settlements not yet approved by the Court have been negotiated with Tosco Corporation and Unocal Corporation. In this settlement, Shell, Chevron, ExxonMobil, Thrifty, and Best are paying \$92.5 million, plus Shell, Chevron and ExxonMobil are guaranteeing payment of the entire reasonable costs of constructing and operating the treatment plant. As required by California law, *Abbott Ford*, 43 Cal.3d at 877, Shell, Chevron, ExxonMobil, and the City have agreed this guarantee of future treatment has a value of \$220.05 million. When added to the nonrefundable \$92.5 million nonrefundable payment and other consideration, the total value of this settlement is \$312.85 million.⁵ This amount is well within the ballpark of the proportional fair share of the liability of Shell, Chevron, ExxonMobil, Thrifty, and Best, for several reasons:

- It is more than *thirty times* the \$9.25 million amount paid in the next highest settlement by defendant, Atlantic Richfield Company, Inc., which has already been

⁵ [See Settlement Agreement at ¶¶ 3.4, 3.7, 3.12, 3.14, 3.16] Other non-monetary “consideration” provided for has no quantifiable value. [See Declaration of Martin DiMezza at ¶ 6 previously filed November 4, 2002.]



1 determined to be in good faith. In fact, this settlement is valued at twelve times
2 more than the total combined other settlements.

- 3 • While there has been much dispute over the technical evidence developed during
4 the extensive investigation of all of the identified potential sources of the MtBE
5 that impacted the Charnock Wellfield, as analyzed by the U.S. EPA and qualified
6 experts in hydrogeology and transport in groundwater, none of that matters here,
7 given that Shell, Chevron, ExxonMobil, Thrifty, and Best, are paying
8 compensation in settlement that exceeds what ExxonMobil's experts think it will
9 cost for full remediation treatment and almost equals the average of the City's
10 potential recovery at trial (not including any punitive damages) based on the City's
11 range of the estimated overall cost of the treatment facility.

12 **2. The Total Value To The City From This Settlement Is In The Ballpark**
13 **Of The Settling Defendants' Proportionate Share Of Liability.**

14 Shell, Chevron, ExxonMobil, Thrifty, and Best have agreed to step up to the plate and
15 settle this matter, providing the City with a guaranteed resolution to restore its wellfield.
16 Substantial data has been gathered concerning the MtBE found in the subsurface beneath the
17 Shell, ExxonMobil, Mobil, Chevron, Thrifty, and Best sites. Two respected experts in
18 hydrogeology and contaminant transport in groundwater, David B. McWhorter and Thomas F.
19 Maguire, reviewed this data and previously provided declarations to this Court in November 2002
20 in support of the prior settlement motion. Shell, in opposition to that motion, filed a declaration
21 by its hydrogeology expert, Daniel B. Stephens. None of the technical disagreements between
22 these experts matter in consideration of this settlement, because Shell, Chevron and ExxonMobil
23 have agreed in settlement to split the Treatment Facility Costs between them as follows:

24	Shell	70%
25	Chevron	20%
26	ExxonMobil	10%.

27 Since settlements with all other refiner defendants have either been approved by this Court or are
28 in the process of being submitted, the complicated and difficult causation issues need not be



1 examined further in order to approve this settlement. The \$312.85 million value of the
2 compensation agreed to by the settling parties greatly exceeds the City's total recovery of \$23.325
3 million in this case to date from all other defendants. In short, even assuming these settling
4 defendants have most of the liability exposure, the \$312.85 million value of the settlement is
5 more than reasonable.

6 **D. The Value Of The Guarantee Portion Of The Settlement Is \$220.05 Million,**
7 **And The Value Of The Entire Settlement Is \$312.85 Million.**

8 As a product of negotiation between litigation adversaries, the settling parties valued the
9 guarantee portion of the settlement at \$220.05 million. They reached this value by giving equal
10 weight to the cost estimates by the City's expert and the defendant's expert. This \$220.05 million
11 agreed upon value, plus \$92.8 million (i.e., \$92.5 million for the cash payments and \$300,000 for
12 the waiver of Chevron's counter-claim), constitutes the reduction or "credit" against any
13 judgment that the non-settling defendants will obtain once this settlement is approved. *See Abbott*
14 *Ford*, 43 Cal.3d at 873. As the California Supreme Court stated in *Abbott Ford*, "[w]e believe
15 that the value placed on the sliding scale agreement by the parties to the agreement - assuming it
16 meets *Tech-Bilt* standards - is the proper amount to set off under Section 877." *Abbott Ford*, 43
17 Cal.3d at 877, fn. 21. The "court should not be burdened with the obligation to determine the
18 *actual* value . . . by use of actuarial or other valuation methods." *Id.* at 879 (emphasis in original).
19 Since the "plaintiff and the settling defendant are likely to have somewhat different, and
20 somewhat conflicting interests in placing a value on the agreement . . . a joint valuation by the
21 plaintiff and the settling defendant should generally produce a reasonable valuation." *Id.* at 879.
22 That is precisely what has occurred in this matter.

23 Analysis of two distinct cost projections support the \$220.05 million value assigned by the
24 parties to the guarantee portion of the settlement as a reasonable value squarely within the range
25 of possible values. First, Anthony Brown of Komex (the City's expert consultants) has estimated
26 the total Treatment Facility Costs at between \$240 million and \$527 million and testified that
27 equal probability should be assigned to each end of the range. [Brown Deposition, 46:19-50:6.]
28 Averaging his estimates produces an average Treatment Facility Cost of \$383.5 million. Second,



Barbara Mickelson, a consultant for ExxonMobil, has also studied the treatment technology alternatives closely and believes complete treatment can be achieved for much lower costs. Mickelson estimates the average total Treatment Facility Costs to be \$92.6 million present value. [Declaration of Barbara Mickelson, ¶¶19.] Averaging Brown's \$383.5 million estimated cost with Mickelson's \$92.6 million estimated cost renders an average estimated cost of \$238.05 million. From that amount, the \$18 million contribution to the Operating Account from settlements with other defendants, which have already been achieved, was subtracted as the portion of the costs paid through other settlements. This results in a final value of \$220.05 million for the guaranteed Treatment Facility Costs. The settling parties did not reduce the value by potential recovery from Lyondell, given the probability that any such recovery will not reduce the settling defendants' contribution to the treatment facility costs.

While the approaches to estimating the remediation costs may vary, as would be expected, as the California Supreme Court has recognized in *Abbott Ford*, 43 Cal.3d at 879, fn. 23, these alternative approaches each confirm that the value agreed to by the settling parties of \$220.05 million is fair and appropriate.

IV. CONCLUSION

Through this settlement, Shell, Chevron, ExxonMobil, Thrifty, and Best have assured the City and its residents that they will obtain clean and safe drinking water, regardless of what happens in this lawsuit. The total compensation offered to the City in this settlement valued at \$312.85 million is well within the ballpark of the proportional liability of these settling defendants. Approval of this settlement will not give the settling defendants any unfair advantage, nor result in any undue prejudice to any non-settling defendant. On the contrary, the non-settling defendants will have an aggregate "credit" or offset of at least \$330.675 million - \$312.85 million from this settlement, plus \$17.825 million from the previously approved settlements with Conoco, Atlantic Richfield Company and Ultramar. Therefore, Shell, Chevron, ExxonMobil, Thrifty, and Best respectfully request that the Court issue an order determining this settlement was entered into in good faith and assigning a total value of \$312.85 million.



1 DATED: December ___, 2003

MORGAN, LEWIS & BOCKIUS LLP

2
3 By _____
4 David L. Schrader
5 Attorneys for Defendants ChevronTexaco Corporation,
6 Chevron U.S.A. Inc. and Chevron Products Company

7 DATED: December ___, 2003

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

8 By _____
9 Roy G. Wuchitech
10 Attorneys for Defendant
11 ExxonMobil Corporation, successor by merger to Exxon
12 Corporation, and Mobil Oil Corporation

13 DATED: December ___, 2003

LAW OFFICES OF MARK B. GILMARTIN

14 By _____
15 Mark B. Gilmartin
16 Attorneys for Cross-Defendants
17 Thrifty Oil Co. and Best California Gas, Ltd.

18 DATED: December ___, 2003

MUNGER, TOLLES & OLSON LLP

19 By _____
20 Stephen M. Kristovich
21 Attorneys for Defendant Shell Oil Company, Shell Oil
22 Products Company, Shell Pipeline Corporation, Equilon
23 Enterprises LLC, Equilon Pipeline Company LLC
24 Texaco Refining and
25 Marketing Inc.



PROOF OF SERVICE

I, Lisa M. Wright, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 300 South Grand Avenue, Twenty-Second Floor, Los Angeles, CA 90071-3132. On December 1, 2003, I served the within documents:

**MEMORANDUM OF POINTS AND AUTHORITIES OF
CHEVRONTEXACO CORPORATION; CHEVRON U.S.A. INC.;
CHEVRON PRODUCTS COMPANY; EXXON MOBIL CORPORATION;
THRIFTY OIL CO.; BEST CALIFORNIA GAS, LTD., SHELL OIL
COMPANY, SHELL OIL PRODUCTS COMPANY, SHELL PIPELINE
CORPORATION, EQUILON ENTERPRISES LLC, EQUILON PIPELINE
COMPANY AND TEXACO REFINING AND MARKETING INC. IN
SUPPORT OF MOTION**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Please see attached service list

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 1, 2003, at Los Angeles, California.

Lisa M. Wright

EXHIBIT 2



1 Duane C. Miller, # 57812
 A. Curtis Sawyer, Jr. #101324
 2 MILLER & SAWYER
 A Professional Corporation
 3 1651 Response Road, Second Floor
 Sacramento, CA 95815
 4 Telephone: (916) 927-8600
 Facsimile: (916) 927-9267

5 Fred Baron (Admitted in Texas)
 6 Ann Cole (Admitted in Texas)
 BARON & BUDD, P.C.
 7 3102 Oak Lawn Avenue, Suite 1100
 Dallas, Texas 75219-4281
 8 Telephone: (214) 521-3605
 Facsimile: (214) 523-9159

9 [Other Counsel Listed on
 10 Signature Page]

11 Attorneys for Plaintiff
 City of Santa Monica

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 IN AND FOR THE COUNTY OF ORANGE

14 CITY OF SANTA MONICA,

15 Plaintiff,

16 vs.

18 SHELL OIL COMPANY; SHELL OIL
 PRODUCTS COMPANY; SHELL
 19 PIPELINE CORPORATION;
 CHEVRON CORPORATION; CHEVRON
 20 U.S.A. INC.; CHEVRON PRODUCTS
 COMPANY; ATLANTIC RICHFIELD
 21 COMPANY; MOBIL OIL CORPORATION;
 EXXON MOBIL CORPORATION; TOSCO
 22 CORPORATION; ULTRAMAR, INC.;
 TEXACO REFINING AND MARKETING,
 23 INC.; EQUILON ENTERPRISES LLC;
 ARCO CHEMICAL COMPANY;
 24 LYONDELL CHEMICAL COMPANY;
 EXXON CORPORATION; UNOCAL
 25 CORPORATION; EQUILON PIPELINE
 COMPANY LLC; and DOES 1
 26 through 600, inclusive,

27 Defendants.

CASE NO. 01CC04331

(Assigned to Judge Sundvold)

**NOTICE OF ENTRY OF AMENDED
 ORDER**

[FILED BY FACSIMILE]

Complaint Filed: June 19, 2000
 Transfer Date: April 2, 2001
 Trial Date: None
 Discovery Cutoff: None

Hearing Date: December 19, 2003
 Time: 9:30 a.m.
 Dept: CX - 105
 Judge: Honorable Stephen J. Sundvold



1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

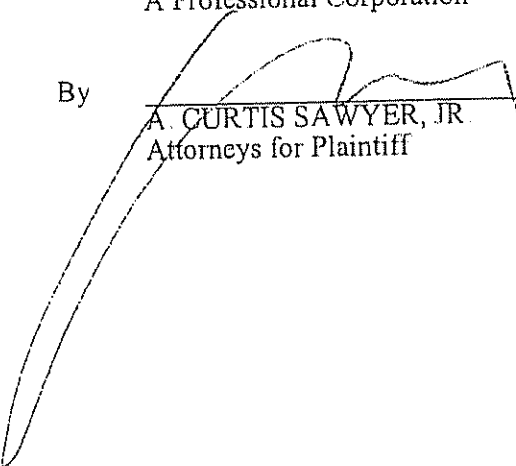
2 NOTICE IS HEREBY GIVEN that on January 9, 2004, the above-referenced court granted
3 the motion for determination of good faith settlement of ChevronTexaco Corporation, Chevron
4 U.S.A. Inc., and Chevron Products Company, ExxonMobil Corporation; Shell Oil Company,
5 Shell Oil Products Company, Shell Pipeline Corporation, Equilon Enterprises LLC, Equilon
6 Pipeline Company LLC, and Texaco Refining and Marketing Inc.; Thrifty Oil Co. and Best
7 California Gas, Ltd.

8 A true and correct copy of the Order is attached hereto as Exhibit 1.

9 Dated: January 14, 2004

MILLER & SAWYER
A Professional Corporation

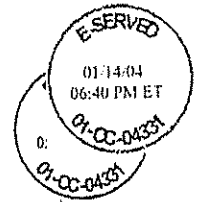
11 By


A. CURTIS SAWYER, JR.
Attorneys for Plaintiff

13 *Other Counsel:*

14 Marsha Jones Moutrie, #69711
15 City Attorney
16 Joseph Lawrence, #99039
17 Assistant City Attorney
18 CITY OF SANTA MONICA
19 1685 Main Street
20 Santa Monica, CA 90401-3295
21 Telephone: (310) 458-8336
22 Facsimile: (310) 395-6727

23 Victor M. Sher, Esq.
24 SHER & LEFF
25 450 Mission Street, 5th Floor
26 San Francisco, CA 94105
27 Telephone: (415) 982-0468
28 Facsimile: (415) 348-8333



FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 CENTRAL JUSTICE CENTER
 JAN - 9 2004
 ALAN SLATER, Clerk of the Court
Nancy Parker
 BY N. PARKER

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 JOHN J. WASILCZYK, State Bar No. 78506
 MORGAN, LEWIS & BOCKIUS LLP
 300 South Grand Avenue
 Twenty-Second Floor
 Los Angeles, CA 90071
 Telephone: (213) 612-2500
 Facsimile: (213) 612-2501

WILLIAM K. DIAL, State Bar No. 41310
 CHEVRON PRODUCTS COMPANY LAW DEPARTMENT
 6001 Bollinger Canyon Road
 San Ramon, California 94583-2398
 Telephone: (925) 842-2642
 Facsimile: (925) 842-3365
 Attorneys for Defendants ChevronTexaco Corporation,
 Chevron U.S.A. Inc. and Chevron Products Company

[Additional Counsel for Moving Parties On Following Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF ORANGE

CITY OF SANTA MONICA,
 Plaintiff,

vs.

SHELL OIL COMPANY; SHELL OIL
 PRODUCTS COMPANY; SHELL
 PIPELINE CORPORATION; CHEVRON
 CORPORATION; CHEVRON U.S.A. INC.;
 CHEVRON PRODUCTS COMPANY;
 ATLANTIC RICHFIELD COMPANY;
 MOBIL OIL CORPORATION;
 EXXONMOBIL CORPORATION; TOSCO
 CORPORATION; ULTRAMAR INC.;
 TEXACO REFINING AND MARKETING
 INC.; EQUILON ENTERPRISES LLC;
 ARCO CHEMICAL COMPANY;
 LYONDELL CHEMICAL COMPANY;
 EXXON CORPORATION; UNOCAL
 CORPORATION; EQUILON PIPELINE
 COMPANY LLC; and DOES 1 through 600,
 inclusive,

Defendants

AND OTHER CROSS-COMPLAINTS

Case No. 01CC04331
 [Assigned for all purposes to the
 Honorable Stephen J. Sundvold]

~~[PROPOSED]~~ AMENDED ORDER ON
 MOTION BY CHEVRONTExACO
 CORPORATION; CHEVRON U.S.A.
 INC.; CHEVRON PRODUCTS
 COMPANY; EXXONMOBIL
 CORPORATION; THRIFTY OIL CO.;
 BEST CALIFORNIA GAS, LTD.; SHELL
 OIL COMPANY; SHELL OIL
 PRODUCTS COMPANY; SHELL
 PIPELINE CORPORATION; EQUILON
 ENTERPRISES LLC; EQUILON
 PIPELINE COMPANY LLC; AND
 TEXACO REFINING AND MARKETING
 INC. FOR DETERMINATION OF GOOD
 FAITH SETTLEMENT

Complaint Filed: June 19, 2000
 Trial Date: None Set

Hearing Date: December 19, 2003
 Time: 9:30 a.m.
 Dept: CX-105
 Judge: Honorable Stephen J. Sundvold

1-LA/751745.1

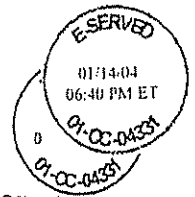
1

~~[PROPOSED]~~ AMENDED ORDER ON MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT

EXHIBIT 1



1 ROY G. WUCHITECH, State Bar No. 54846
 2 JEFFREY J. PARKER, State Bar No. 155377
 3 LORI OSMUNDSEN, State Bar No. 211964
 4 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
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 6 Including Professional Corporations
 7 333 South Hope Street, 48th Floor
 8 Los Angeles, California 90071-1448
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 12 Exxon Corporation, and Mobil Oil Corporation
 13 MARK B. GILMARTIN, State Bar No. 98384
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 18 Facsimile: (310) 395-7573
 19 Attorneys for Cross-Defendants
 20 Thrifty Oil Co. and Best California Gas, Ltd.
 21 RONALD L. OLSON, State Bar No. 044597
 22 STEPHEN M. KRISTOVICH, State Bar No. 082164
 23 CYNTHIA L. BURCH, State Bar No. 086020
 24 MICHAEL R. BARSA, State Bar No. 190643
 25 MUNGER, TOLLES & OLSON LLP
 26 355 South Grand Avenue
 27 Thirty-fifth Floor
 28 Los Angeles, California 90071
 Telephone: (213) 683-9100
 Facsimile: (213) 687-3702
 Attorneys for Defendant Shell Oil Company, Shell Oil Products Company, Shell Pipeline
 Corporation, Equilon Enterprises LLC, Equilon Pipeline Company LLC and Texaco Refining and
 Marketing Inc.



1 The Motion for Determination of Good Faith Settlement of ChevronTexaco Corporation
2 (formerly Chevron Corporation), Chevron U.S.A. Inc., and Chevron Products Company,
3 ExxonMobil Corporation; Shell Oil Company, Shell Oil Products Company, Shell Pipeline
4 Corporation, Equilon Enterprises LLC, Equilon Pipeline Company LLC and Texaco Refining
5 And Marketing Inc.; Thrifty Oil Co. and Best California Gas, Ltd. (collectively, "Settling
6 Parties"), came on regularly for hearing by the Court on December 19, 2003. The matters having
7 been argued and submitted, and good cause being shown,

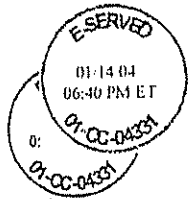
8 IT IS HEREBY ORDERED that:

9 In accordance with the Court's prior written ruling granting the Settling Parties' Motion,
10 the Court finds that the Settlement entered into between Plaintiff City of Santa Monica and
11 Settling Parties is in good faith pursuant to California Code of Civil Procedure sections 877 and
12 877.6 and that Settling Parties, and each of them, are entitled to protection from contribution and
13 equitable indemnity claims as provided in California Code of Civil Procedure sections 876 and
14 877.6. The Court further finds that the settlement value agreed upon by the Settling Parties and
15 the City of Santa Monica is reasonable and, accordingly, assigns a value of three hundred twelve
16 million, eight hundred and fifty thousand dollars (\$312,850,000) to the Settlement.

17
18 DATED: JAN 9th 2004

Honorable Stephen J. Sundvold

Honorable Stephen J. Sundvold

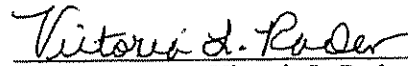


PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18, and not a party to the within action. My business address is 300 South Grand Avenue, Twenty-Second Floor, Los Angeles, CA 90071-3132. On January 7, 2004, I caused to be served the following documents in this action: **[PROPOSED] AMENDED ORDER ON MOTION BY CHEVRONTExACO CORPORATION; CHEVRON U.S.A. INC.; CHEVRON PRODUCTS COMPANY; EXXONMOBIL CORPORATION; THRIFTY OIL CO.; BEST CALIFORNIA GAS, LTD.; SHELL OIL COMPANY; SHELL OIL PRODUCTS COMPANY; SHELL PIPELINE CORPORATION, EQUILON ENTERPRISES LLC; EQUILON PIPELINE COMPANY LLC; AND TEXACO REFINING AND MARKETING INC. FOR DETERMINATION OF GOOD FAITH SETTLEMENT**

BY VERILAW: True and correct copies of the foregoing documents were electronically served on counsel of record on January 7, 2004, by means of transmitting the documents to Verilaw in accordance with the Court's Case Management Order for Electronic Service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 7, 2004, at Los Angeles, California.


Victoria L. Rader

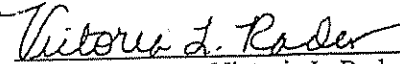


PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18, and not a party to the within action. My business address is 300 South Grand Avenue, Twenty-Second Floor, Los Angeles, CA 90071-3132. On January 14, 2004, I caused to be served the following documents in this action: **AMENDED ORDER ON MOTION BY CHEVRONTEXACO CORPORATION; CHEVRON U.S.A. INC.; CHEVRON PRODUCTS COMPANY; EXXONMOBIL CORPORATION; THRIFTY OIL CO.; BEST CALIFORNIA GAS, LTD.; SHELL OIL COMPANY; SHELL OIL PRODUCTS COMPANY; SHELL PIPELINE CORPORATION, EQUILON ENTERPRISES LLC; EQUILON PIPELINE COMPANY LLC; AND TEXACO REFINING AND MARKETING INC. FOR DETERMINATION OF GOOD FAITH SETTLEMENT**

BY VERILAW: True and correct copies of the foregoing documents were electronically served on counsel of record on January 14, 2004, by means of transmitting the documents to Verilaw in accordance with the Court's Case Management Order for Electronic Service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 14, 2004, at Los Angeles, California.



Victoria L. Rader



PROOF OF SERVICE

I, the undersigned, declare that I am, and was at the time of service of the paper(s) herein referred to, over the age of 18 years and not a party to this action. My business address is 1651 Response Road, Second Floor, Sacramento, CA 95815, which is located in the county in which this mailing occurred.

On January 14, 2004, I served: **NOTICE OF ENTRY OF AMENDED ORDER** on the following persons or parties by placing a true copy thereof in a sealed envelope, showing the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, as follows:

 BY MAIL:

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited in the U S Postal Service on that same day with postage thereon fully prepaid at Sacramento, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

 BY PERSONAL SERVICE:

I caused to be delivered such envelope by hand to the offices of the addressee.

 BY FEDERAL EXPRESS OR OVERNIGHT COURIER

 BY TELECOPIER

I served by facsimile as indicated on the attached service list.

 X **BY ELECTRONIC SERVICE SYSTEM VIA VERILAW TECHNOLOGIES**

I caused the above-described document to be served by having a copy of the same posted on the Verilaw website, in accordance with the Court's Order governing electronic service of filings in this matter.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on January 14, 2004, at Sacramento, California.


CHRISTINA HISE



1 Fred Baron, Esq.
 Scott Summy, Esq.
 2 Ann Cole, Esq.
 Celeste Evangeliste, Esq.
 3 BARON & BUDD, P.C.
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 4 Dallas, Texas 75219-4281

5 Marsha Jones Moutrie, Esq.
 Joseph Lawrence, Esq.
 6 CITY OF SANTA MONICA
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 7 Santa Monica, CA 90401-3295

8 Victor M. Sher, Esq.
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10 Ronald L. Olson, Esq.
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 Products Co., Shell Pipeline
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14 Roy G. Wuchitech, Esq.
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16
 17 Elizabeth J. Hagelin, Esq.
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 21 Los Angeles, CA 90067

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22 Tracie Renfro, Esq.
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Attorney for Defendant
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24 Ward L. Benshoof, Esq.
 25 Peter A. Nyquist, Esq.
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 Oil Company of California)

27

28



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3 Los Angeles, CA 90067

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and Lyondell Chemical Co.

4 H. Lee Godfrey, Esq.
Vineet Bhatia
5 Susman Godfrey, LLP
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and Lyondell Chemical Co.

7 Alan J. Hoffman, Esq.
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8 One Logan Square
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9 Philadelphia, Pennsylvania 19103-6998

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10 David Schrader, Esq.
Andrea Ordin, Esq.
11 Morgan, Lewis & Bockius
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12 Los Angeles, CA 90071-3132

13 D. Terrell Sherman, Esq.
Chevron Products Co. Law Dept.
14 6001 Bollinger Canyon Road
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Attorneys for Defendants
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Inc. and Chevron Products
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15 Matthew T. Heartney, Esq.
16 Stephanie M. Bonnett, Esq.
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17 777 South Figueroa Street, 44th Floor
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Attorneys for Defendant
Atlantic Richfield Co.

18 Beth S. Dorris, Esq.
19 McKenna & Cuneo LLP
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20 Los Angeles, CA 90071

Attorneys for Defendant
Atlantic Richfield Co.

21 Jon D. Anderson, Esq.
22 Gregory M. Saylin, Esq.
Latham & Watkins
23 650 Town Center Drive, Suite 2000
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Attorneys for Defendant
Tosco Corporation

24 Jon Tisdale, Esq.
25 Samantha M. Ball, Esq.
Gilbert, Kelly, Crowley & Jennett LLP
26 1200 Wilshire Boulevard, Sixth Floor
Los Angeles, CA 90017-1908

Attorneys for Defendant
Tosco Corporation

27
28



1 John F. Cermak, Jr
 Sonja A. Inglin, Esq.
 2 Jenkins & Gilchrist LLP
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 3 Los Angeles, CA 90025-7120

Attorneys for Cross-Defendant
 HLW Corporation

4 Mark B. Gilmartin, Esq.
 Law Offices of Mark B. Gilmartin
 5 233 Wilshire Boulevard, Suite 350
 Santa Monica, CA 90401

Attorneys for Defendant Thrifty Oil Co
 And Best California Gas Ltd

6 Kenneth A. Ehrlich, Esq.
 7 Jeffer, Mangels, Butler & Marmaro LLP
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 8 Los Angeles, CA 90067

Attorneys for Winall Oil Company

9 J. Sheila Welch, Esq.
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 10 6510 Alondra Boulevard
 Paramount, CA 90723

Attorneys for Great West Car Wash

11 Steven L. Hoch, Esq.
 12 Hatch & Parent
 11911 San Vicente Blvd., Ste. 350
 13 Los Angeles, CA 90049

Attorneys for Cross-Defendant Southern
 Cal Water Company

14 Robert J. Saperstein, Esq.
 Hatch & Parent
 15 21 East Carrillo Street
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Attorneys for Cross-Defendant Southern
 Cal Water Company

16 Clement L. Glynn, Esq.
 17 Adam Friedenberg, Esq.
 Glynn & Finley
 18 One Walnut Creek Center
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 19 Walnut Creek, CA 94596

Attorneys for Cross-Defendant and Cross-
 Complainants, Conoco, Inc., Kayo Oil Co.,
 And Douglas Oil Co

20 Ralph F. Hirschmann, Esq.
 Law Offices of Ralph F. Hirschmann
 21 707 Wilshire Blvd., Suite 4910
 Los Angeles, CA 90017

Attorneys for Defendants Shell Oil Co.,
 Shell Oil Products Co., Shell Pipeline Corp.,
 Equilon Enterprises, Equilon Pipeline Co.,
 as to cross-defendants Atlantic Richfield Co.,
 Union Oil Co. of CA, BP USA, and B P Amoco

23

24

25

26

27

28

EXHIBIT 3

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
ROY G. WUCHITECH, Cal. Bar No. 54846
3 333 South Hope Street, 48th Floor
Los Angeles, California 90071-1448
4 Telephone: 213-620-1780
Facsimile: 213-620-1398
5

6 Attorneys for Defendant, EXXON MOBIL
CORPORATION, successor by merger to Exxon
Corporation and Mobil Oil Corporation
7

8
9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
11

12 CITY OF SANTA MONICA,

13 Plaintiff,

14 v.

15 SHELL OIL COMPANY; SHELL OIL
PRODUCTS COMPANY; SHELL
PIPELINE CORPORATION; CHEVRON
16 CORPORATION; CHEVRON U.S.A.
INC.; CHEVRON PRODUCTS
17 COMPANY; ATLANTIC RICHFIELD
COMPANY; MOBIL OIL
18 CORPORATION; EXXONMOBIL
CORPORATION; TOSCO
19 CORPORATION; ULTRAMAR INC.;
TEXACO REFINING AND
20 MARKETING INC.; EQUILON
ENTERPRISES LLC; ARCO CHEMICAL
21 COMPANY; LYONDELL CHEMICAL
COMPANY; EXXON CORPORATION;
22 UNOCAL CORPORATION; EQUILON
PIPELINE COMPANY LLC; and DOES 1
23 through 600, inclusive,

24 Defendants.
25

26 AND OTHER CROSS-COMPLAINTS,
27
28

Case No. 01CC04331

Assigned to: The Hon. Honorable Stephen
J. Sundvold

**DECLARATION OF BARBARA
MICKELSON IN SUPPORT OF
MOTION FOR DETERMINATION OF
GOOD FAITH SETTLEMENT [CCP §
877.6]**

[Complaint Filed: June 19, 2000]

Trial Date: None Set

Date: December 19, 2003
Time: 9:30 a.m.
Dept.: CX-105

1 I, Barbara J. Mickelson, declare as follows:
2

3 1. I am the President of Acton • Mickelson • Environmental, Inc. (AME) an
4 environmental engineering consulting firm I founded in 1991 to serve the needs of industrial and
5 financial clients in managing the environmental risks of their operations and properties. AME
6 has completed significant environmental projects covering the spectrum of site investigation,
7 assessment, remediation, maintenance, and closure. I make this Declaration in support of the
8 motion of Shell Oil Company, Shell Oil Products Company Shell Pipeline Company, Equilon
9 Enterprises LLC, Equilon Pipeline Company, Texaco Refining & Marketing, Inc., ExxonMobil
10 Corporation, Chevron U.S.A. Inc., ChevronTexaco Corporation, Thrifty Oil Co., and Best
11 California Gas Ltd (hereinafter collectively the "Settling Defendants") for determination of good
12 faith settlement. The statements below are based on my personal knowledge, and if called upon
13 to testify to them, I could and would competently do so.
14
15

16 2. I have worked on petroleum hydrocarbon remediation and clean-up
17 projects, including treatment of impacted ground water for use as drinking water, for
18 approximately 23 years. My educational and professional background is set forth in my
19 Curriculum Vitae, a copy of which is attached to this Declaration and incorporated by reference.
20

21 3. I have implemented and managed several investigation and remediation
22 projects in California involving the oxygenate Methyl Tertiary Butyl Ether (MTBE) including:
23 A) project manager for investigation of MTBE contamination at a retail gasoline service station;
24 and B) as part of a regional assessment of impacts to a major southern California well field. In
25 the latter capacity, I provided oversight for regional assessment activities, which included a
26 basin-wide ground water flow model.
27
28

1 4. My experience also includes conducting ground water monitoring
2 including depth-specific sampling of three municipal supply wells at the San Gabriel Superfund
3 site and coordinating preliminary design of a packed column air stripping facility for remediation
4 of trichloroethylene (TCE) impacted water for the U. S. Army Corps of Engineers. I also
5 coordinated emergency installation of systems at 9 locations serving 22 residences to remove
6 TCE and supervised the installation of two air stripping systems at a site in Central California to
7 remove TCE from ground water to allow it to be used for both domestic and irrigation purposes.
8

9 5. I have been designated as an expert and provided litigation support and
10 expert testimony in jurisdictions in Arizona, California, Nevada, Colorado, Delaware, Maryland,
11 Texas, Virginia, West Virginia and the U. S. Virgin Islands.
12

13 6. My firm was retained to evaluate methodologies to remediate water
14 produced from the Charnock well field and to provide treatment of the extracted ground water so
15 that the City of Santa Monica (COSM) could use it as drinking water. My engagement included
16 developing methodologies to accomplish water treatment to meet the following goals: A) remove
17 MTBE and Tertiary Butyl Alcohol (TBA) from the aquifer to a level below currently established
18 drinking water standards, and B) develop a physical chemical process to be utilized for TBA
19 removal.
20

21 7. After evaluation of treatment processes including air stripping, granular
22 activated carbon (GAC) adsorption, resin adsorption, and advanced oxidation certain treatment
23 processes were not carried forward. Air stripping was eliminated because of height and noise
24 restrictions at the COSM Arcadia site. Carbonaceous resin was eliminated because the
25 manufacturer (Rohm and Haas) had ceased production as well as concerns with resin
26 regeneration and condensate handling. GAC was feasible for MTBE, but was considered
27 ineffective for TBA due to poor adsorption properties. The principal methods selected therefore
28

1 included an advanced oxidation process (AOP) and GAC. Potential AOP technologies evaluated
2 included UV/peroxide and ozone/peroxide. The UV/peroxide process had already been pilot
3 tested by Kennedy/Jenks in 1998-99 at the Charnock site and excessive energy consumption,
4 lamp scaling, and mercury release upon lamp breakage were experienced. Ozone/peroxide AOP
5 was selected because the process had the advantages of no UV lamp issues, had variable output
6 capability (i.e., chemical oxidant dosage could be fed only as needed by contaminant influent
7 concentrations), and at least one manufacturer advertised a proprietary design capable of
8 minimizing bromate formation.
9

10 8. The treatment elements were configured in two processes or "Trains".
11 The first involved GAC elements preceding and following the AOP element (Train 1: GAC-
12 AOP-GAC); the second included an AOP element first followed by two GAC elements (Train 2:
13 AOP-GAC-GAC).
14

15 9. Preliminary costs were developed based on the two process configurations
16 utilizing either US Filters or Calgon supplied GAC and vessels. Additionally, costs developed
17 by Komex for the COSM were used for ancillary treatment components including the pipeline
18 from Charnock and a treated water reservoir at Arcadia.

19 10. The costs assumed the design phase would include pilot testing of each of
20 the process configurations and GAC from each supplier, Calgon and US Filters, at varied
21 concentrations of TBA and MTBE. The cost estimates developed assumed that the MTBE/TBA
22 treatment facility would be constructed at the existing COSM Arcadia treatment facility and that
23 the MTBE/TBA treatment facility would have a 7,000-gallon per minute treatment capacity.
24 The cost for each treatment Train varies significantly based on GAC sizing parameters (empty
25 bed contact time and hydraulic loading rate) recommended by the GAC suppliers. The final
26
27

costs presented herein are based on US Filters GAC pricing as they were considered to be more conservative for use in a preliminary estimate. The final capital cost estimates were as follows:

Train 1 (GAC – AOP – GAC): \$78.3 million,

Train 2 (AOP – GAC-GAC): \$73.9 million

11. Operation and Maintenance (O&M) costs for the facility included costs of GAC, AOP chemicals, electrical power, operating manpower and laboratory expenses. These costs were a function of the expected influent contaminant concentrations, which were assumed to peak at 300 ug/L MTBE and 30 ug/L TBA. The present value of predicted O&M costs was calculated over an assumed 10-year operational period. Results are:

Train 1 (GAC – AOP – GAC): \$ 10.9 million

Train 2 (AOP – GAC-GAC) \$ 12.0 million

12. The total present value costs for each Train are as follows:

Train 1 (GAC – AOP – GAC): \$ 89.2 million

Train 2 (AOP – GAC-GAC) \$ 85.9 million

13. The estimating methodology used to develop the preliminary costs included a capital cost estimating technique (the “Lang method,”) as originally published in Chemical Engineering magazine, 1947-48 and as exemplified in “Cost Estimation: Capital Costs and Operating Expenses,” Chemical Engineering-McGraw-Hill seminar, 1982. The Lang method is reported to have an accuracy of +/- 30 percent, which corresponds to a “study” estimate. More definitive estimates require more design information than is available until the pilot testing referred to above (paragraph 10) is completed. The initial estimating process involves multiplying delivered process equipment costs by a factor (3.1 to 4.74, depending on plant type - solids, solid-fluid, or fluid). The actual Lang factor utilized in the Charnock estimate was increased by 15 percent to account for the known tendency of the Lang Method to

1 underestimate by this amount. The total capital cost estimate was further increased by 30 percent
2 (i.e., the study estimate accuracy range) as a contingency factor to arrive at a conservative
3 facility cost. Process equipment costs were obtained from equipment vendors. GAC costs were
4 obtained from both Calgon Carbon and USFilter. AOP system costs were obtained from APT
5 Inc. Delivered equipment costs for use in the Lang Method were obtained by multiplying
6 equipment costs by 1.14 to account for tax and freight.
7

8 14. Operations and maintenance costs included a variable portion (GAC, AOP
9 chemicals, and AOP power) affected by contaminant influent concentrations and a fixed portion
10 (maintenance, analytical, etc.) Variable costs were estimated at three step influent MTBE/TBA
11 concentrations (3/3, 100/10, and 300/30). The GAC vendors estimated activated carbon
12 consumption. These predicted values were further increased by 15 percent to account for the
13 expected presence of TBA. AOP chemical consumption (peroxide and oxygen) and electrical
14 power were provided by APT, Inc. Other electrical power costs (for transfer pumps) were
15 estimated by the required flow rate and estimated differential head. An electrical utility cost of
16 \$0.05/kWh was obtained for the site from the Los Angeles Department of Water and Power.
17

18 15. The O&M costs for the three step influent concentrations were fit to a
19 mathematical curve, which was used to predict costs for the variable influent concentrations
20 expected over years 1 through 10. The present value of the 10-year O&M costs was calculated
21 by compound interest formulas incorporating an interest rate of 5 percent.
22

23 16. Cost estimates were compared to reference materials including the
24 publication "Treatment Technologies for Removal of MTBE from Drinking Water" (the
25 California MTBE Research Partnership, February, 2000) and the evaluation prepared by
26 Kennedy/Jenks for the PRP consortium. GAC consumption rates as estimated by the GAC
27 vendors were further compared with values depicted in "Treating MTBE-Impacted Drinking
28

1 Water Using Granular Activated Carbon,” (The California MTBE Research Partnership,
2 December 2001).

3 17. Shell proposes the use of an Adsorption-only GAC-based process, which
4 would eliminate AOP and utilize GAC for removal of both MTBE and TBA. In this scenario,
5 the number of GAC adsorber vessels would be approximately the same as the GAC/AOP
6 processes because the sizing guidelines are based on hydraulic loading (i.e., flow rate) and not
7 influent concentration. However, the GAC consumption portion of the O&M costs would
8 increase because TBA is only poorly adsorbed to GAC. The cost estimates varied significantly
9 based on different GAC sizing parameters used for different types of GAC (bituminous F600 vs.
10 coconut shell). The final costs presented herein are based on US Filters GAC pricing as they
11 were considered to be more conservative for use in a preliminary estimate. An order of
12 magnitude cost estimate for an adsorption only treatment facility is:
13
14

15 Capital cost: \$66.3 million

16 18. The O&M costs for an adsorption-only treatment facility were estimated
17 by modifying the present value costs developed previously for GAC/AOP processes. The
18 assumed GAC consumption is 10 times that based on MTBE adsorption, and any costs
19 associated with AOP (peroxide, oxygen, AOP power) were deleted. Results:
20

21 Adsorption (GAC – GAC): \$ 36.5 million

22 19. The total present value cost for an adsorption-only treatment facility is:

23 Adsorption (GAC-GAC): \$ 102.8 million

24 20. The average present value cost including capital and O&M of the three
25 treatment processes estimated and presented herein is \$92.6 million.
26
27
28

1 I declare under penalty of perjury pursuant to the laws of the State of California that the
2 foregoing is true and correct. Executed on December 1, 2003, at El Dorado Hills, California.

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A handwritten signature in cursive script, appearing to read "Barbara J. Mickelson", is written over a light gray, textured rectangular background.

BARBARA J. MICKELSON, P.E.

• **BARBARA J. MICKELSON, P.E.**

Summary of Professional Experience

Barbara Mickelson is a Registered Professional Engineer in California, Texas, and Wyoming, and has over 25 years of experience specializing in the following:

- Assessment of petroleum hydrocarbon impacts to soil and ground water
- Analysis of environmental risks associated with organic and inorganic substances and planning for appropriate remediation and mitigation
- Mining project permitting with respect to water quality and quantity, geomorphology, dam and embankment design and engineering, and design of alternate sediment and runoff control facilities
- Water and wastewater treatment systems for municipal, industrial, and chemical manufacture, and petroleum refining processes
- Expert witness testimony

Education and Professional Development

- B.S., Civil Engineering - South Dakota School of Mines and Technology, 1976
- OSHA 40-Hour Training for Hazardous Waste Operations
- OSHA Health and Safety Training for Supervisors of Hazardous Waste Workers

Registrations and Professional Affiliations

- Professional Engineer - California, Texas, and Wyoming
- American Society of Civil Engineers
- National Water Well Association
- Association of Groundwater Scientists and Engineers

Representative Experience

Evaluation and Remediation of Petroleum Hydrocarbons

- Project manager for investigation of MTBE contamination at a retail gasoline service station as part of a regional assessment of impacts to a major southern California well field. Provided oversight for client of regional assessment activities, which included a basin-wide ground water flow model.
- Project manager for litigation support involving manufacturing facilities. Completed ground water and vadose zone modeling studies of fate and transport of chlorinated solvents to explain the source of the chemicals and/or evaluate potential future impacts and the necessity for remediation. Demonstrated that contaminant sources at several sites did not present a significant risk.
- Project manager for litigation support involving a retail gasoline service station. Completed ground water modeling studies of fate and transport of gasoline constituents for the estimation of the probable date of release and evaluation of general cleanup scenarios. Responsible for soil and ground water sampling, aquifer testing, and general facility inspection. Analyzed local geology and hydrogeology, evaluated soil and ground water quality data, and rendered interpretation of the nature, extent, and potential source(s) of subsurface petroleum contamination.

- Coordinated investigation and mitigation of environmental incidents related to underground gasoline storage system operation at over 300 sites in the Eastern United States and California.
- Served on U.S. Air Force technical panel on bioremediation of hydrocarbon contaminated sites to evaluate emerging technologies and research needs for effective remediation.
- Managed and permitted the installation and operation of remedial systems for ground water and soil contamination. Supervised installation of remediation systems, including ground water recovery and treatment and soil vapor extraction and treatment.

Investigations completed included product source identification, ground water quality characterization and assessment, ground water modeling (vadose zone and saturated zone), modeling and evaluation of differential transport of contaminants, and risk assessments.

- Prepared final environmental impact assessment in satisfaction of RCRA 7003 Consent Order issued by EPA Region I. Coordinated a cooperative oil company (Exxon, Gulf/Chevron, Amoco) aquifer evaluation and monitoring program required by EPA Region III, in Jacksonville, Maryland. RCRA 3013 cooperative monitoring program included monitoring well construction, aquifer pump testing, and soil and ground water sampling and analyses.
- Provided expert witness testimony in support of underground storage tank related environmental litigation in Maryland, Delaware, California, Arizona, and the U.S. Virgin Islands. Provided environmental testimony at numerous hearings and negotiations with environmental compliance agencies in Delaware, Maryland, Pennsylvania, Virginia, West Virginia, California, and Nevada.
- Coordinated precision testing program of underground product storage systems at over 15 retail sites in Guam, under contract to ESSO Eastern and the government of Guam, in satisfaction of Guam EPA requirements.

Remedial Investigation/Feasibility Studies

- Project coordinator for the investigation of areas of concern identified to be impacted by contaminants associated with former ordnance manufacturing operations. Contaminants of concern included volatile and semivolatile organics, metals and explosives. Perchlorate was detected in ground water and surface water at the site. Nitrosodimethylamine (NDMA) a potential breakdown product of the explosives HMX and RDX was also detected in ground water at the site. The investigation of the occurrence and extent of the perchlorate and NDMA in ground water included depth specific sampling using innovative sampling equipment and traditional multi-depth monitoring well clusters. Coordinated a testing program of both onsite and offsite monitoring and production wells to identify wells impacted by perchlorate following the California Department of Health Services development of testing methods for low level perchlorate analyses in water samples.
- Project Coordinator for preparation of a remedial investigation/feasibility study (RI/FS) work plan for a 1,000-acre former ordnance facility in Santa Clarita. The RI/FS work plan includes a prior Site Investigation Report, a Remedial Investigation Work Plan, a Project Management Plan, a Communication and Coordination Plan, and a Public Participation Plan. Field activities to assess/remediate the site include geophysical surveys, soil gas surveys, soil borings, exploratory trenches, and shallow soil sampling.
- Project Manager for design of a water treatment system for the San Gabriel Valley Areas 1, 2, and 4 Superfund sites (Bartolo Wellfield) in Los Angeles County, California, under contract to the U.S. Army Corps of Engineers. The treatment plant design incorporated treatment of water containing VOCs by packed column air stripping and off-gas treatment with activated carbon to remove airborne VOCs.

- Project Manager responsible for remedial investigation and feasibility study of six sites at Air Force Plant 42, Palmdale, California, as part of the Air Force Installation Restoration Program (IRP) to define the magnitude, extent, direction, and rate of migration of identified constituents of concern within the soil column as well as to evaluate the magnitude of any volatile emissions from the impacted areas. Remedial investigation data were evaluated to identify and screen potential technologies and to assemble alternatives for remediation of impacted areas. Each of the alternatives was evaluated against identified ARARs and TBCs and criteria of (1) effectiveness, (2) implementability, and (3) cost.
- Managed soil vapor assessments performed in support of IRP Phase I Remedial Investigations at Edwards Air Force Base, Lancaster, California, and Plant 42, Palmdale, California. Over 300 vapor points were installed and evaluated for petroleum (jet fuel) related hydrocarbons and chlorinated organic compounds.

Hazardous Waste Site Remediation

- Project Engineer responsible for closure of an explosive burn area. The former explosive waste burn area was excavated and residual soil metals concentrations statistically compared to background for three different soil types. The area received acknowledgment of clean closure from the California Environmental Protection Agency.
- Engineer responsible for oversight of design, installation, and operation of 500 and 600 gallon per minute air strippers and residential carbon activated carbon systems for treatment of TCE impacted ground water used for irrigation and drinking water. Responsible engineer for design and oversight of installation of activated carbon treatment systems at an active ordnance manufacturing facility.

Project Director responsible for over 35 tasks associated with obtaining closure of five former RCRA units at a 1,000-acre former ordnance facility in Santa Clarita, California, including routine NPDES permitting, quarterly ground water monitoring, and vacuum extraction system monitoring. Activities in support of closure include excavation and statistical evaluation of metals contaminated propellant burn areas, hydrogeologic assessment of a phosphorus-stabilizing lagoon, and ongoing remediation system operations support. One of the remediation technologies being utilized at this site is a state-of-the-art TCE dual-stage, fixed-bed catalytic oxidizer, with batch scrubbing.

Wastewater Treatment

- Environmental engineer responsible for technical support and operating supervision of 13 million gallon per day (mgd) chemical plant waste treatment facility and bio-solids incinerator. Selected and designed treatment schemes for final clarification, sludge thickening, and belt filtration dewatering. Designed and implemented upgraded polymer blending facility.
- Responsible for preparation of selected unit operations manuals, operator training, and on-shift supervision during start-up of a 7 mgd refinery waste treatment plant. Designed and implemented operability modifications and enhancements to the effluent treatment system. Following successful start-up of the effluent treatment system, monitored kinetics of the biological system, set clarifier recycle, and waste rates and nutrient and polymer feed rates to optimize treater performance.

Water Quality Management

- Responsible for evaluation of surface water and ground water data from mining properties in Wyoming, Arkansas, and Texas. Supervised mine-site hydrologic and geomorphic data collection and evaluation for compliance with state and federal permits. Designed and secured permits for sedimentation ponds, diversion ditches, and alternate sediment control structures in Wyoming and Arkansas. Developed pre-mining geomorphic baseline data for three Wyoming mining properties for use in development of predicted geomorphically stable post mining topographies.

Publications

Jones, M. K., Mickelson, B. J., Chamseddin, H. K., and L. R. Freeberg. 1990. "A Practical Application for Unsaturated Zone Fate and Transport Modeling Using SESOIL for Risk Assessments at Fuel-Contaminated Sites." Presented at NWWA Fourth National Outdoor Action Conference.

Henry, D. K., Mickelson, B. J., and D. Ohnstad. 1990. "Well Logging and Depth Specific Sampling in a Producing Water Supply Well as an Aid in Identifying Contaminant Stratification." Presented at NWWA Fourth National Outdoor Action Conference.

EXHIBIT 4

1 DUANE C. MILLER (State Bar No. 57812)
 2 VICTOR M. SHER (State Bar No. 96197)

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[Other Counsel Listed on
 Signature Page]

Attorneys for Plaintiff
 City of Santa Monica

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

CITY OF SANTA MONICA,

Plaintiff,

v.

SHELL OIL COMPANY; SHELL OIL
 PRODUCTS COMPANY; SHELL
 PIPELINE CORPORATION; CHEVRON
 CORPORATION; CHEVRON U.S.A. INC.;
 CHEVRON PRODUCTS COMPANY;
 ATLANTIC RICHFIELD COMPANY;
 MOBIL OIL CORPORATION; EXXON
 MOBIL CORPORATION; TOSCO
 CORPORATION; ULTRAMAR INC.;
 TEXACO REFINING AND MARKETING
 INC.; EQUILON ENTERPRISES LLC;
 ARCO CHEMICAL COMPANY;
 LYONDELL CHEMICAL COMPANY;
 EXXON CORPORATION; UNOCAL
 CORPORATION; EQUILON PIPELINE
 COMPANY LLC; and DOES 1 through 600,
 inclusive,

Defendants.

Case No. 01CC04331

(Assigned to: Hon. Stephen J.
 Sundvold)

**DECLARATION OF ANTHONY
 BROWN REGARDING MOTION FOR
 APPROVAL OF GOOD FAITH
 SETTLEMENT**

Complaint Filed: June 19, 2000
 Trial Date: None Assigned

Hearing Date: January 17, 2003
 Time: 9:30 a.m.
 Department: CX102

G 009515

1 I, ANTHONY BROWN, DECLARE:

2 1. I am a principal in Komex H2O Science, Inc., a California corporation,
3 and Chief Operating Officer and Director of US operations for its parent company Komex
4 Environmental Ltd., (Komex) a Canadian corporation. Komex is a global environmental
5 and water resources consulting firm with over 350 staff in more than 20 offices worldwide.
6 I make this declaration based on personal knowledge. If called to testify to the matters set
7 out below, I could and would do so competently.

8 2. My educational and professional background are set forth in my
9 Curriculum Vitae, a copy of which is attached to this Declaration as Exhibit 1 and
10 incorporated as if set forth in full here. My firm generally, and I specifically, have
11 extensive experience evaluating, investigating and remediating soil and groundwater
12 contamination involving many different contaminants in a variety of contexts, including in
13 connection with releases of gasoline to the subsurface. In particular, we have extensive
14 experience with the contamination of soil, groundwater and drinking water supplies by
15 methyl tertiary butyl ether (MTBE), and related compounds such as tertiary butyl alcohol
16 (TBA), and all facets of the contaminant-related investigation, remediation, and treatment
17 of those compounds.

18 3. I have been designated as an expert in several court cases (as listed on
19 my CV), and have been qualified as an expert witness on these and related topics at trial as
20 well. Earlier this year my expert testimony concerning investigation and remediation of
21 MTBE contamination was presented to the jury in *South Tahoe Public Utility District v.*
22 *Arco, et al.* (San Francisco Superior Court), a case involving a public water supplier whose
23 drinking water aquifers were contaminated with MTBE released from retail gasoline
24 stations. In addition, I have been designated as an expert in cases for the following
25 communities or public water suppliers impacted by MTBE contamination: the town of
26 Glenville, California; the Great Oaks Water Company; and the town of East Alton, Illinois.
27 I was also designated as an expert by the Orange County District Attorney's Office in a
28 case against ARCO involving MTBE. I also provided expert testimony to the Court in *In*

2.

1 *re MTBE Litigation*, a case involving MTBE contamination that was pending in federal
2 court in New York (my testimony was proffered in connection with plaintiffs' motion for
3 class certification). I have also briefed Federal, State and local elected officials, White
4 House advisors, Federal and State environmental agencies, and many professional
5 organizations on the impact of MTBE on drinking water supplies, and the investigation,
6 remediation and treatment of MTBE contaminated soil, groundwater and drinking water.

7 4. My firm was retained jointly by the City of Santa Monica and
8 ExxonMobil Corporation to conduct a detailed investigation of contamination, and to
9 design, build and operate soil and groundwater remediation systems, and a drinking water
10 treatment facility to address MTBE contamination in the City's Arcadia Well Field. This
11 facility is one of the first MTBE public drinking water treatment facilities in California to
12 obtain a permit from the California Department of Health Services (DHS) to deliver treated
13 drinking water to the public.

14 5. Recently my firm and I were asked by plaintiff's counsel in this case to
15 review the portion of the scientific literature that addresses technologies to remove MTBE
16 and TBA contamination from drinking water (with particular emphasis on any studies
17 showing the costs associated with such treatment), to review existing site-specific data for
18 the Charnock well field and groundwater sub-basin, and to develop an estimate based on
19 the best current available information of the costs of a treatment facility to remove such
20 contaminants from groundwater pumped from the City's Charnock Well Field. In
21 connection with this work, individuals at Komex working under my supervision and I have
22 also reviewed and evaluated investigation, monitoring and remediation data submitted to
23 regulatory agencies by various companies in connection with their investigation and
24 monitoring of contamination in the Charnock Sub-basin.

25 6. Komex and I developed an analysis of the likely cost of designing,
26 building, operating and maintaining a public drinking water treatment facility to remove
27 MTBE and TBA from water extracted by the City's Charnock Well Field, so that such
28 water can be delivered to the City's drinking water consumers. A true and correct copy of

1 our analysis, "Treatment Feasibility Study for Restoration of the City of Santa Monica
2 Charnock Well Field" (the "Feasibility Study"), is attached to this Declaration as Exhibit 2
3 and incorporated by this reference as though set out in full here. The Feasibility Study
4 accurately reflects my opinions and those of my staff who worked with me on this project.
5 The data and studies we reviewed and considered in reaching our conclusions and opinions
6 are listed in the Feasibility Study.

7 7. In my opinion, and as explained more thoroughly in the Feasibility
8 Study, a reasonable cost estimate for a drinking water treatment facility for the Charnock
9 Well Field ranges from a present value of approximately \$240 million to a present value of
10 approximately \$527 million. The actual costs will depend on a variety of factors that are
11 the subject of ongoing studies and analyses. For example, evaluations of the optimum
12 combination of treatment technologies for MTBE and TBA (in terms of effectiveness and
13 cost) will be refined based on the results of "pilot testing" to determine what technologies
14 and combined treatment systems work best to remove these compounds from actual
15 Charnock groundwater. Millions of dollars have already been expended on such pilot
16 testing, by consultants to the American Petroleum Institute, individual oil companies,
17 government agencies, and academic institutions, and by my firm; however, additional site-
18 specific testing is required. The outcome of such testing may affect both the capital costs
19 of the facility (that is, the costs associated with designing and building the plant), as well as
20 the costs of operating and maintaining the facility over time. Similarly, estimates of the
21 necessary duration of treatment – which obviously determines the overall cost of operating
22 and maintaining the plant once built – may also be refined based on operational data once
23 treatment at the facility commences. In addition, although there is a large volume of
24 monitoring data already collected in the Sub-basin, additional information about the amount
25 and extent of contamination in the aquifer, and subsequent groundwater flow and solute
26 transport computer modeling, may further refine estimates of the facility's costs. However,
27 the characteristics of MTBE and TBA, as well as what is already known about the extent
28 and magnitude of the contamination, make clear that treatment duration will be measured in

1 decades, not years, and the range given (20 to 50 years) is reasonable (if not conservative)
2 for planning and costing purposes.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed this 29 of October, 2002, at Westminster, California.

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ANTHONY BROWN

9 Other Counsel:
10 Marsha Jones Moutrie, #69711
11 City Attorney
12 Joseph Lawrence, #99039
13 Assistant City Attorney
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